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UNITED STATES DISTRICT COURT

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CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

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JOSEPH C. McNICHOLAS, an
individual,

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Plaintiff,

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vs.

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LOYOLA MARYMOUNT
UNIVERSITY,

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Defendant.

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1. A. PURPOSES AND LIMITATIONS

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Case No. 2:17-CV-00386 TJH (Ex)

Hon. Terry J. Hatter, Jr., Courtroom 9B

**STIPULATED PROTECTIVE
ORDER**

1 discovery and that the protection it affords from public disclosure and use extends
2 only to the limited information or items that are entitled to confidential treatment
3 under the applicable legal principles.

4

5 B. GOOD CAUSE STATEMENT

6 This action is likely to involve private employment personnel files, medical
7 records, private information of third parties and other financial and/or proprietary
8 information for which special protection from public disclosure and from use for
9 any purpose other than prosecution of this action is warranted. Such confidential
10 and proprietary materials and information consist of, among other things,
11 confidential employment personnel files of individuals, medical records including,
12 but not limited to, psychiatric and psychological records, private information of
13 third parties, other financial and/or proprietary information of individuals and
14 educational institutions, information otherwise generally unavailable to the public,
15 or which may be privileged or otherwise protected from disclosure under state or
16 federal statutes, court rules, case decisions, or common law. Accordingly, to
17 expedite the flow of information, to facilitate the prompt resolution of disputes over
18 confidentiality of discovery materials, to adequately protect information the parties
19 are entitled to keep confidential, to ensure that the parties are permitted reasonable
20 necessary uses of such material in preparation for and in the conduct of trial, to
21 address their handling at the end of the litigation, and serve the ends of justice, a
22 protective order for such information is justified in this matter. It is the intent of the
23 parties that information will not be designated as confidential for tactical reasons
24 and that nothing be so designated without a good faith belief that it has been
25 maintained in a confidential, non-public manner, and there is good cause why it
26 should not be part of the public record of this case.

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1 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER
2 SEAL

3 The parties further acknowledge, as set forth in Section 12.3, below, that this
4 Stipulated Protective Order does not entitle them to file confidential information
5 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed
6 and the standards that will be applied when a party seeks permission from the court
7 to file material under seal.

8 There is a strong presumption that the public has a right of access to judicial
9 proceedings and records in civil cases. In connection with non-dispositive motions,
10 good cause must be shown to support a filing under seal. *See Kamakana v. City and*
11 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors*
12 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electrics,*
13 *Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders
14 require good cause showing), and a specific showing of good cause or compelling
15 reasons with proper evidentiary support and legal justification, must be made with
16 respect to Protected Material (defined hereafter) that a party seeks to file under seal.
17 The parties' mere designation of Disclosure or Discovery Material as
18 CONFIDENTIAL does not—without the submission of competent evidence by
19 declaration, establishing that the material sought to be filed under seal qualifies as
20 confidential, privileged, or otherwise protectable—constitute good cause.

21 Further, if a party requests sealing related to a dispositive motion or trial, then
22 compelling reasons, not only good cause, for the sealing must be shown, and the
23 relief sought shall be narrowly tailored to serve the specific interest to be protected.
24 *See Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir. 2010). For
25 each item or type of information, document, or thing sought to be filed or introduced
26 under seal in connection with a dispositive motion or trial, the party seeking
27 protection must articulate compelling reasons, supported by specific facts and legal
28 justification, for the requested sealing order. Again, competent evidence supporting

1 the application to file documents under seal must be provided by declaration.

2 Any document that is not confidential, privileged, or otherwise protectable in
3 its entirety will not be filed under seal if the confidential portions can be redacted. If
4 documents can be redacted, then a redacted version for public viewing, omitting
5 only the confidential, privileged, or otherwise protectable portions of the document,
6 shall be filed. Any application that seeks to file documents under seal in their
7 entirety should include an explanation of why redaction is not feasible.

8

9 2. **DEFINITIONS**

10 2.1 **Action**: This pending lawsuit, entitled *Joseph C. McNicholas v. Loyola*
11 *Marymount University*, Case No. 2:17-CV-00386 TJH (Ex).

12 2.2 **Challenging Party**: a Party or Non-Party that challenges the
13 designation of information or items under this Order.

14 2.3 **“CONFIDENTIAL” Information or Items**: information (regardless of
15 how it is generated, stored or maintained) or tangible things that qualify for
16 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
17 the Good Cause Statement.

18 2.4 **Counsel**: Outside Counsel of Record and House Counsel (as well as
19 their support staff).

20 2.5 **Designating Party**: a Party or Non-Party that designates information or
21 items that it produces in disclosures or in responses to discovery as
22 “CONFIDENTIAL.”

23 2.6 **Disclosure or Discovery Material**: all items or information, regardless
24 of the medium or manner in which it is generated, stored, or maintained (including,
25 among other things, testimony, transcripts, and tangible things), that are produced or
26 generated in disclosures or responses to discovery in this matter.

27 2.7 **Expert**: a person with specialized knowledge or experience in a matter
28 pertinent to the litigation who has been retained by a Party or its counsel to serve as

1 an expert witness or as a consultant in this Action.

2 2.8 House Counsel: attorneys who are employees of a party to this Action.
3 House Counsel does not include Outside Counsel of Record or any other outside
4 counsel.

5 2.9 Non-Party: any natural person, partnership, corporation, association or
6 other legal entity not named as a Party to this action.

7 2.10 Outside Counsel of Record: attorneys who are not employees of a party
8 to this Action but are retained to represent or advise a party to this Action and have
9 appeared in this Action on behalf of that party or are affiliated with a law firm that
10 has appeared on behalf of that party, and includes support staff.

11 2.11 Party: any party to this Action, including all of its officers, directors,
12 employees, consultants, retained experts, and Outside Counsel of Record (and their
13 support staffs).

14 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
15 Discovery Material in this Action.

16 2.13 Professional Vendors: persons or entities that provide litigation
17 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
18 demonstrations, and organizing, storing, or retrieving data in any form or medium)
19 and their employees and subcontractors.

20 2.14 Protected Material: any Disclosure or Discovery Material that is
21 designated as "CONFIDENTIAL."

22 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
23 from a Producing Party.

24

25 3. SCOPE

26 The protections conferred by this Stipulation and Order cover not only
27 Protected Material (as defined above), but also (1) any information copied or
28 extracted from Protected Material; (2) all copies, excerpts, summaries, or

1 compilations of Protected Material; and (3) any testimony, conversations, or
2 presentations by Parties or their Counsel that might reveal Protected Material.

3 Any use of Protected Material at trial shall be governed by the orders of the
4 trial judge. This Order does not govern the use of Protected Material at trial.

5

6 **4. DURATION**

7 Once a case proceeds to trial, information that was designated as
8 **CONFIDENTIAL** or maintained pursuant to this protective order used or introduced
9 as an exhibit at trial becomes public and will be presumptively available to all
10 members of the public, including the press, unless compelling reasons supported by
11 specific factual findings to proceed otherwise are made to the trial judge in advance
12 of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause”
13 showing for sealing documents produced in discovery from “compelling reasons”
14 standard when merits-related documents are part of court record). Accordingly, the
15 terms of this protective order do not extend beyond the commencement of the trial.

16

17 **5. DESIGNATING PROTECTED MATERIAL**

18 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**
19 Each Party or Non-Party that designates information or items for protection under
20 this Order must take care to limit any such designation to specific material that
21 qualifies under the appropriate standards. The Designating Party must designate for
22 protection only those parts of material, documents, items or oral or written
23 communications that qualify so that other portions of the material, documents, items
24 or communications for which protection is not warranted are not swept unjustifiably
25 within the ambit of this Order.

26 Mass, indiscriminate or routinized designations are prohibited. Designations
27 that are shown to be clearly unjustified or that have been made for an improper
28 purpose (e.g., to unnecessarily encumber the case development process or to impose

1 unnecessary expenses and burdens on other parties) may expose the Designating
2 Party to sanctions.

3 If it comes to a Designating Party's attention that information or items that it
4 designated for protection do not qualify for protection, that Designating Party must
5 promptly notify all other Parties that it is withdrawing the inapplicable designation.

6 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
7 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
8 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
9 under this Order must be clearly so designated before the material is disclosed or
10 produced.

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (e.g., paper or electronic documents,
13 but excluding transcripts of depositions or other pretrial or trial proceedings), that
14 the Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
15 "CONFIDENTIAL legend"), to each page that contains protected material. If only a
16 portion of the material on a page qualifies for protection, the Producing Party also
17 must clearly identify the protected portion(s) (e.g., by making appropriate markings
18 in the margins).

19 A Party or Non-Party that makes original documents available for inspection
20 need not designate them for protection until after the inspecting Party has indicated
21 which documents it would like copied and produced. During the inspection and
22 before the designation, all of the material made available for inspection shall be
23 deemed "CONFIDENTIAL." After the inspecting Party has identified the
24 documents it wants copied and produced, the Producing Party must determine which
25 documents, or portions thereof, qualify for protection under this Order. Then,
26 before producing the specified documents, the Producing Party must affix the
27 "CONFIDENTIAL legend" to each page that contains Protected Material. If only a
28 portion of the material on a page qualifies for protection, the Producing Party also

1 must clearly identify the protected portion(s) (e.g., by making appropriate markings
2 in the margins).

3 (b) for testimony given in depositions that the Designating Party identifies the
4 Disclosure or Discovery Material on the record, before the close of the deposition all
5 protected testimony.

6 (c) for information produced in some form other than documentary and for
7 any other tangible items, that the Producing Party affix in a prominent place on the
8 exterior of the container or containers in which the information is stored the legend
9 "CONFIDENTIAL." If only a portion or portions of the information warrants
10 protection, the Producing Party, to the extent practicable, shall identify the protected
11 portion(s).

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
13 failure to designate qualified information or items does not, standing alone, waive
14 the Designating Party's right to secure protection under this Order for such material.
15 Upon timely correction of a designation, the Receiving Party must make reasonable
16 efforts to assure that the material is treated in accordance with the provisions of this
17 Order.

18

19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
21 designation of confidentiality at any time that is consistent with the Court's
22 Scheduling Order.

23 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
24 resolution process under Local Rule 37-1 et seq.

25 6.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
26 joint stipulation pursuant to Local Rule 37-2.

27 6.4 The burden of persuasion in any such challenge proceeding shall be on
28 the Designating Party. Frivolous challenges, and those made for an improper

1 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
2 parties) may expose the Challenging Party to sanctions. Unless the Designating
3 Party has waived or withdrawn the confidentiality designation, all parties shall
4 continue to afford the material in question the level of protection to which it is
5 entitled under the Producing Party's designation until the Court rules on the
6 challenge.

7

8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is
10 disclosed or produced by another Party or by a Non-Party in connection with this
11 Action only for prosecuting, defending or attempting to settle this Action. Such
12 Protected Material may be disclosed only to the categories of persons and under the
13 conditions described in this Order. When the Action has been terminated, a
14 Receiving Party must comply with the provisions of section 13 below (FINAL
15 DISPOSITION).

16 Protected Material must be stored and maintained by a Receiving Party at a
17 location and in a secure manner that ensures that access is limited to the persons
18 authorized under this Order.

19 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
20 otherwise ordered by the court or permitted in writing by the Designating Party, a
21 Receiving Party may disclose any information or item designated
22 "CONFIDENTIAL" only to:

23 (a) the Receiving Party's Outside Counsel of Record in this Action, as well
24 as employees of said Outside Counsel of Record to whom it is reasonably necessary
25 to disclose the information for this Action;

26 (b) the officers, directors, and employees (including House Counsel) of the
27 Receiving Party to whom disclosure is reasonably necessary for this Action;

28 (c) Experts (as defined in this Order) of the Receiving Party to whom

1 disclosure is reasonably necessary for this Action and who have signed the
2 "Acknowledgment and Agreement to Be Bound" (Exhibit A);
3 (d) the court and its personnel;
4 (e) court reporters and their staff;
5 (f) professional jury or trial consultants, mock jurors, and Professional
6 Vendors to whom disclosure is reasonably necessary for this Action and who have
7 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);
8 (g) the author or recipient of a document containing the information or a
9 custodian or other person who otherwise possessed or knew the information;
10 (h) during their depositions, witnesses, and attorneys for witnesses, in the
11 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
12 requests that the witness sign the form attached as Exhibit A hereto; and (2) they
13 will not be permitted to keep any confidential information unless they sign the
14 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise
15 agreed by the Designating Party or ordered by the court. Pages of transcribed
16 deposition testimony or exhibits to depositions that reveal Protected Material may
17 be separately bound by the court reporter and may not be disclosed to anyone except
18 as permitted under this Stipulated Protective Order; and
19 (i) any mediator or settlement officer, and their supporting personnel,
20 mutually agreed upon by any of the parties engaged in settlement discussions.

21

22 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
23 **PRODUCED IN OTHER LITIGATION**

24 If a Party is served with a subpoena or a court order issued in other litigation
25 that compels disclosure of any information or items designated in this Action as
26 "CONFIDENTIAL," that Party must:

27 (a) promptly notify in writing the Designating Party. Such notification shall
28 include a copy of the subpoena or court order;

5 (c) cooperate with respect to all reasonable procedures sought to be pursued
6 by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as "CONFIDENTIAL" before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

16 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
17 PRODUCED IN THIS LITIGATION

18 (a) The terms of this Order are applicable to information produced by a Non-
19 Party in this Action and designated as "CONFIDENTIAL." Such information
20 produced by Non-Parties in connection with this litigation is protected by the
21 remedies and relief provided by this Order. Nothing in these provisions should be
22 construed as prohibiting a Non-Party from seeking additional protections.

23 (b) In the event that a Party is required, by a valid discovery request, to
24 produce a Non-Party's confidential information in its possession, and the Party is
25 subject to an agreement with the Non-Party not to produce the Non-Party's
26 confidential information, then the Party shall:

27 (1) promptly notify in writing the Requesting Party and the Non-Party that
28 some or all of the information requested is subject to a confidentiality agreement

1 with a Non-Party;

2 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
3 Order in this Action, the relevant discovery request(s), and a reasonably specific
4 description of the information requested; and

5 (3) make the information requested available for inspection by the Non-Party,
6 if requested.

7 (c) If the Non-Party fails to seek a protective order from this court within 14
8 days of receiving the notice and accompanying information, the Receiving Party
9 may produce the Non-Party's confidential information responsive to the discovery
10 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
11 not produce any information in its possession or control that is subject to the
12 confidentiality agreement with the Non-Party before a determination by the court.
13 Absent a court order to the contrary, the Non-Party shall bear the burden and
14 expense of seeking protection in this court of its Protected Material.

15

16 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

17 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
18 Protected Material to any person or in any circumstance not authorized under this
19 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
20 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
21 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
22 persons to whom unauthorized disclosures were made of all the terms of this Order,
23 and (d) request such person or persons to execute the "Acknowledgment and
24 Agreement to Be Bound" that is attached hereto as Exhibit A.

25

26 11. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
PROTECTED MATERIAL

27 When a Producing Party gives notice to Receiving Parties that certain

1 inadvertently produced material is subject to a claim of privilege or other protection,
2 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
3 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
4 may be established in an e-discovery order that provides for production without
5 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar
6 as the parties reach an agreement on the effect of disclosure of a communication or
7 information covered by the attorney-client privilege or work product protection, the
8 parties may incorporate their agreement in the stipulated protective order submitted
9 to the court.

10

11 12. **MISCELLANEOUS**

12 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
13 person to seek its modification by the Court in the future.

14 12.2 Right to Assert Other Objections. By stipulating to the entry of this
15 Protective Order, no Party waives any right it otherwise would have to object to
16 disclosing or producing any information or item on any ground not addressed in this
17 Stipulated Protective Order. Similarly, no Party waives any right to object on any
18 ground to use in evidence of any of the material covered by this Protective Order.

19 12.3 Filing Protected Material. A Party that seeks to file under seal any
20 Protected Material must comply with Local Civil Rule 79-5. Protected Material
21 may only be filed under seal pursuant to a court order authorizing the sealing of the
22 specific Protected Material at issue. If a Party's request to file Protected Material
23 under seal is denied by the court, then the Receiving Party may file the information
24 in the public record unless otherwise instructed by the court.

25

26 13. **FINAL DISPOSITION**

27 After the final disposition of this Action, as defined in paragraph 4, within 60
28 days of a written request by the Designating Party, each Receiving Party must return

1 all Protected Material to the Producing Party or destroy such material. As used in
2 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
3 summaries, and any other format reproducing or capturing any of the Protected
4 Material. Whether the Protected Material is returned or destroyed, the Receiving
5 Party must submit a written certification to the Producing Party (and, if not the same
6 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
7 (by category, where appropriate) all the Protected Material that was returned or
8 destroyed and (2) affirms that the Receiving Party has not retained any copies,
9 abstracts, compilations, summaries or any other format reproducing or capturing any
10 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
11 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
12 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
13 reports, attorney work product, and consultant and expert work product, even if such
14 materials contain Protected Material. Any such archival copies that contain or
15 constitute Protected Material remain subject to this Protective Order as set forth in
16 Section 4 (DURATION).

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1 14. VIOLATION

2 Any violation of this Order may be punished by appropriate measures
3 including, without limitation, contempt proceedings and/or monetary sanctions.

4

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6

7 DATED: June 26, 2017

8 
Howard Z. Rosen
9 Attorneys for Plaintiff
10 Joseph C. McNicholas

11

12 DATED: 7/10/17

13 
Adam L. Johnson
14 Attorneys for Defendant
15 Loyola Marymount University

16

17 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED. DATED: 7/10/17

18 
19

20 Hon. Charles F. Eick
21 United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of
6 perjury that I have read in its entirety and understand the Stipulated Protective Order
7 that was issued by the United States District Court for the Central District of
8 California on _____ in the case of *Joseph C. McNicholas v. Loyola*
9 *Marymount University*, Case No. 2:17-CV-00386 TJH (Ex). I agree to comply with
10 and to be bound by all the terms of this Stipulated Protective Order and I understand
11 and acknowledge that failure to so comply could expose me to sanctions and
12 punishment in the nature of contempt. I solemnly promise that I will not disclose in
13 any manner any information or item that is subject to this Stipulated Protective
14 Order to any person or entity except in strict compliance with the provisions of this
15 Order. I further agree to submit to the jurisdiction of the United States District Court
16 for the Central District of California for enforcing the terms of this Stipulated
17 Protective Order, even if such enforcement proceedings occur after termination of
18 this action. I hereby appoint _____ [print or type full
19 name] of _____ [print or type full address
20 and telephone number] as my California agent for service of process in connection
21 with this action or any proceedings related to enforcement of this Stipulated
22 Protective Order.

23 Date:

24 City and State where sworn and signed:

25

26 Printed name:

27 | Signature:

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 650 Town Center Drive, Suite 1200, Costa Mesa, CA 92626-1925.

On July 10, 2017, I served true copies of the following document(s) described as **STIPULATED PROTECTIVE ORDER** on the interested parties in this action as follows:

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 10, 2017, at Costa Mesa, California.

/s/ Holli Kiyomi
Holli Kiyomi